Covad Communications

Triennial Review *ex parte*

FCC Wireline
Competition Bureau

September 27, 2002

Covad at a Glance

Lines in Service	>350,000
Split Business / Residential	50% / 50%
Businesses & Homes Passed	40 million

Largest DSL provider to US Businesses

Financially healthy

Annual Revenue Run Rate	>$400 mill.
Cash on Hand	$245 mill.

Daily Install Rate	~900 lines
Average Professional Install Time	20 days
Average Self Install Time	10 days

Industry leading installation performance

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**Q2 2002 annualized*

Covad is fulfilling the broadband promise

- Covad's nationwide network reaches 45% of the nation's homes and businesses -- the largest national broadband network. Booking over a thousand new orders *each day.*
- True wholesaler to the nation's largest residential ISPs
  - Wholesale ISPs: AOL, Earthlink, AT&T, dozens of others.
- True wholesaler to small business carriers. The only nationwide business-class DSL provider -- no BOC offers it.
  - Wholesale carrier customers: Sprint, SBC, AT&T, WorldCom.
- Current customer base is 50% residential (100% new customers are linesharing) and 50% small business.
- The only force leading broadband prices *down* -- Covad leads with residential broadband at $21.95.
  - SBC has already followed by lowering prices - although not as much. Others will too only if competition remains in the residential market.

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Covad fulfills the promise of the 1996 Act

- Facilities based network deployment (DSLAMs, routers, ATM equipment) in over 1800 central offices -- 45% of the country.
- Covad utilizes *only* the core of the ILEC bottleneck -- the ILEC transmission grid (loops and interoffice transport) -- exactly what Congress and the Commission intended.
- If the Commission allows the remonopolization of ILEC transmission facilities, it will lose the only remaining nationwide broadband provider.
  - Covad is the *only* nationwide option for residential ISPs (ILECs don't want to serve independent ISPs -- *see* BOC Broadband NPRM comments).
  - Covad is the *only* nationwide option for small business DSL (ILECs don't offer SDSL business class DSL services).

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ILECs have introduced no evidence on the record of changes in circumstances since the adoption of linesharing in 1999 that could support elimination of the linesharing UNE.

- In the absence of that record support, the Commission cannot eliminate linesharing.
- "It is axiomatic that an agency choosing to alter its regulatory course "must supply a reasoned analysis indicating that its prior policies and standards are being deliberately changed, not casually ignored." Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C.Cir.1970), cert. denied, 403 U.S. 923, 91 S.Ct. 2233, 29 L.Ed.2d 701 (1971); accord Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43, 103 S.Ct. 2856, 2866, 77 L.Ed.2d 443 (1983)."
- "Revocation constitutes a reversal of the agency's former views as to the proper course.... In the abstract, there is no more reason to presume that changing circumstances require the rescission of prior action, instead of a revision in or even the extension of current regulation. If Congress established a presumption from which judicial review should start, that presumption ... is not against ... regulation, but against changes in current policy that are not justified by the rulemaking record." Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 41, 42, 103 S.Ct. 2856, 2866, 77 L.Ed.2d 443 (1983)

What evidence is on the record of change since the *UNE Remand Order?*

- **Loops** are still bottlenecks, cannot be economically or technically duplicated, regardless of what service is offered over the loops, or what material the loops are made of. Nothing on the record supports any changes to the Commission's current loop rules.
- **Lineshared loops** are still the only way to serve the residential/SOHO DSL market. Nothing on the record challenges the economic or technical impossibility of serving residential/SOHO customers over stand-alone loops. No evidence on the record that CLECs are not impaired without lineshared loops.
- **Interoffice transport** is not available from alternate providers. Collocated fiber providers link COs with downtown office buildings, not other COs. Not a single piece of evidence on the record that COs are linked to one another by CLECs.
- **OSS** is vital for pre-order loop makeup info, ordering, provisioning, billing, repair. Nothing on the record supports eliminating OSS.

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Loop Unbundling

ILEC loop plant is ubiquitous and cannot be duplicated

- According to the Commission's ARMIS reports:
  - ILECs have deployed nearly six million kilometers of local loop copper cable.
  - ILECs have deployed more than 671,000 kilometers of local loop fiber optic cable.
  - ILECs own more than 19 million telephone poles, over which is strung two million kilometers of aerial cabling.
  - ILECs own nearly two million kilometers worth of underground cabling in trenches and conduit.
  - The total reported book value of ILEC telecommunications cable and wire facilities alone (not including other ILEC assets) in 2000 was over $349 billion.

Source: ARMIS statistics from Statistics of Communications Common Carriers, Operating Statistics of Reporting Incumbent Local Exchange Carriers as of December 31, 2000, Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, Table 2.6, available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/SOCC/00socc.pdf.

A loop is a loop is a loop

- Regardless of the material it is made of, regardless of the customer served over it, and regardless of the speed of service offered over it, a loop is a bottleneck facility.
- If the Commission attempts to engineer limitations on what can be offered by CLECs over a bottleneck loop facility, it will be engineering a halt to innovation.
- The Commission's loop unbundling rules must continue to require unbundling of loops capable of offering any technically feasible telecommunications service, including all flavors of DSL and T-1.
- Any restriction on customer segment or speed of service over a loop flies in the face of the intent of the Act and the Commission's stated goal of encouraging the widest possible deployment of broadband services.
- No argument can be made that mandating the availability of loops harms innovation.

Loop unbundling rules must be clear

- ILECs must be obligated to provide loops capable of supporting any technology presumed acceptable for deployment pursuant to the Commission's existing rules.
  - DSL-capable loops of all kinds.
  - DS-1 capable loops.
  - Lineshared loops.
- ILECs must be required to condition and de-condition loops to the extent technically feasible.
- ILEC "no facility" T-1 claims must be addressed. Nondiscrimination provisions of 251(c)(3) require ILECs to do for wholesale CLEC customers exactly what they do for their own retail customers.
- Loop unbundling without specific provisioning obligation is meaningless. ILECs must be required to provide loops in 3 business days (standalone loops) and 1 business day (lineshared loops), pursuant to the Commission's UNE Performance Metrics NPRM.

How to address *USTA v. FCC*?

- Unbundling of loops (with the exception of lineshared loops) not at issue in *USTA*. Loops are clear nationwide bottleneck.
- Commission must conclude that impairment test is met by loops, the core bottleneck local facility, and must continue to make loops available as UNEs on a national basis.
  - "Granular analysis" of loops would reveal that route-specific analysis of hundreds of millions of nationwide loops is neither possible nor necessary. Loops are always a bottleneck.
  - Unbundling loops on a nationwide basis fulfills Congressional goal of facilities-based competition -- core loop bottleneck neither technically nor economically feasible to duplicate.
- CLECs compete with the in-region monopoly BOCs by offering customers access to nationwide networks -- exactly what the Act intended. In the absence of ubiquitous loop unbundling, CLECs are unable to provide nationwide service.

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Loop Unbundling:

Lineshared Loops

Linesharing for residential/SOHO market

- ADSL designed to operate on same loop as voice, preserving the baseband voice and utilizing unused upper frequencies.
- Consumer selling point is talking and surfing the net at the same time over their existing phone line. All BOCs market their retail services in this manner.
- Each truck roll = $180. Standalone loop requires Covad *and* ILEC truck roll. Impossible to serve residential market.
- Self-install rate at 98% for consumers allows Covad to mail Jumpstart kit to consumers and turn up service within 7 days -- self-install not possible with stand-alone loops.
- Interval for linesharing UNEs (because the loop is already installed and already works) ~ 2-3 days
- Interval for standalone loop ~ 7-10 days.
  - Consumers won't wait for standalone loop from Covad when if they can get lineshared loop from ILEC.

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BOCs all market their retail DSL services based on the advantages of linesharing.

- **Verizon**: "Now you can log on to the Internet and talk on the phone at the same time."
  http://www22.verizon.com/foryourhome/dsl/whatisdsl/NLF_WhatIsDSL.asp.
- **SBC**: "Use your existing telephone line. Make phone calls, send and receive data on the same line."
  http://www.pacbell.com/affinity/san/1,,24,00.html?SRC=http%3A%2F%2Fsw51%2Esbc%2Ecom%2Fctrk%2Fp%2Egif%3F&EI=20020716210134C&E=L&CI=&UI=&EL=&TI=&RI=&RD=.
- **Qwest**: "Talk on the phone and surf the Internet at the same time. No need to purchase an additional telephone line."
  http://www.qwest.com/residential/products/dsl/index.html.
- **BellSouth**: "The service lets you send data and voice over the same line so you can talk or fax while you surf."
  http://www.fastaccess.com/consumer/blsc_whatisdsl.jsp.

Covad cannot be competitive with ILECs without lineshared loops.

- Consumers will not suffer through two installs (loop plus Covad install) and will instead chose BOC self-install via linesharing.
- Install interval of less than 10 days for linesharing versus 20 days for standalone loop.
- Customer cannot talk and surf on the same line -- new facility (if available) must be installed.
- Covad could not maintain technician force to install huge volume of consumer lines, while BOCs need no technicians because of self-install.
- Consumer price point provides insufficient revenue to support purchase of standalone loop.

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Covad would lose money on every single consumer line deployed over stand-alone loops.

			NPV **Line Shared**	NPV **2nd Line**
Wholesale ADSL		Access only	$ 306	$ (278)
Wholesale ADSL		Lite + IP	$ 140	$ (457)
Wholesale ADSL		Self install	$ 442	$ (176)
Retail	ADSL	Surfer	$ 403	$ (197)
Retail	ADSL	Link	$ 257	$ (343)
Retail	ADSL	Plus	$ 576	$ (24)

- Extra costs include: Truck rolls (2 -- ILEC plus Covad); no self-install kit; no use of existing in-service loop; longer interval for loop provisioning

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Covad ADSL vs Cable

	Covad ADSL	Cable Modems
Bandwidth	✓ Covad ADSL is a dedicated service. End users do not share bandwidth & connection speeds are consistent.	✗ Cable bandwidth is shared by all end users in a given area. Leads to performance degradation during peak hours.
Security	✓ Covad gives end users a dedicated connection to lessen security risks.	✗ Shared bandwidth raises security concerns. Information theft & electronic snooping can occur.
Business Usage	✓ Covad's TeleSoho service is provisioned with a fixed IP address which facilitates hosting, videoconferencing & VPN capabilities.	✗ Most cable providers do not provide static IP addresses.

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Covad ADSL vs Phone Company DSL

	Covad ADSL	ILEC xDSL
Installation Kit	✓ Covad's award winning self install kits have most end users connected in <20 minutes.	✗ Phone company installation experience consistently ranks below Covad experience.
Installation Process	✓ Covad installs most ADSL orders in <14 days.	✗ Average Phone company install time can be 30+ days.
Options	✓ Covad can offer IDSL to end users that don't qualify for ADSL services.	✗ Phone companies offer end users no alternatives if they cannot get ADSL.
Coverage	✓ Covad provides DSL nationwide and is available to 40% of US residential customers.	✗ Phone companies are regional providers that cannot provide nationwide service.

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In short, Covad lineshared services are different than, and superior to, ILEC retail offerings because:

- Covad offers the lowest nationwide broadband prices through dozens of wholesale carriers and ISPs.
- The installation experience of Covad's customers consistently ranks far above phone company retail DSL customers.
- Covad's self-install kits have most end users connected in 20 minutes.
- Covad installs most ADSL orders in less than 10 days.
- Phone companies offer end users no alternatives to ADSL, whereas Covad offers other "flavors" of DSL to consumers - IDSL and SDSL, for example.
- Covad offers a lineshared product specifically targeted to home office users (TeleSOHO). TeleSOHO supports multiple PCs and one public/fixed IP address. TeleSOHO provides broadband connectivity to enterprise customers that have rejected T-1 as too expensive.
- Covad offers a wide variety of service packages to support customer needs. Examples include Covad's Telesurfer Link (384/128), Telesurfer (608kb/128kb) and TeleSurfer Plus (1.5meg/128kb).
- Covad's TeleSOHO service is provisioned with a fixed IP address, which facilitates hosting, videoconferencing & VPN capabilities.

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CLECs are still impaired without access to lineshared loops

- The Commission's conclusions underlying the adoption of linesharing are not challenged on the record in the Triennial Review.
- "Carriers seeking to deploy voice-compatible xDSL-based services cannot self-provision loops." Linesharing Order at para. 37.
  - CLECs still cannot duplicate the ILECs' nationwide loop plant.
- "Requiring that competitors provide both voice and xDSL services, or none at all, effectively binds together two distinct services that are otherwise technologically distinct. Such bundling . . . will drive investment away from the provision of advanced services." Linesharing Order at para. 56.
  - Particularly in this capital environment, DSL providers cannot afford the hundreds of millions of dollars needed to deploy nationwide voice architectures.
- No BOC submitted a supportable claim on the record to be suffering economic harm or deterred from innovation because of unbundling of lineshared loops.

Verizon mounts the only serious challenge to linesharing unbundling, and its arguments are without merit.

1. Verizon claims that linesharing is not a "network element" because the high frequency portion of the loop is not a "dedicated facility." Verizon Comments at 82.
   - **But network element definition is not limited to "dedicated" facility" -- rather, definition includes "facility or equipment" as well as "features, functions, and capabilities that are provided by means of such facility or equipment." Thus, the frequencies of the loop are features, functions, and capabilities of the loop, and thus are included within the definition of a network element.**
2. CLECs are not impaired without access to linesharing, because cable modems, satellite, and wireless "provide the same functionality to consumers" as DSL and thus "constitute precisely the type of facilities available outside of the incumbent's network" that bars the Commission from unbundling lineshared loops. Verizon Comments at 83.
   - **As described earlier, Covad DSL is a superior service to alternative broadband retail offerings, and is superior to BOC retail DSL. Consumers benefit from the technical and price superiority of Covad's DSL offerings. In addition, cable modem and other alternative facilities are not available to Covad, and thus Covad is still "impaired" within the meaning of the statute without access to lineshared loops.**

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Verizon linesharing arguments, continued

3. ILECs are "new entrants and relatively minor players in this market" and thus the Commission "cannot compel access" to ILEC loops for broadband CLECs. Verizon Comments at 84.
   - **The ILECs are not “new entrants” as to local loop plant, and are certainly not “minor players” as to their control of those bottleneck facilities. The issue of the ILECs’ share of the customer base of retail broadband services is not relevant to the question of whether CLECs are impaired without access to loops in their ability to provide telecommunications services. ILECs control bottleneck loop facilities, and absent access to those facilities, CLECs are impaired.**
   - **Mere existence of cable modem services does not change bottleneck nature of loops -- CLECs are still impaired without access to loops.**
   - **Loops are not “new wires” and are not entitled to “new rules.”**
4. Imposing an unbundling obligation "would jeopardize the continued viability of [broadband] competition." Verizon Comments at 84.
   - **To the contrary, the linesharing obligation has led to an explosion in broadband competition. Verizon introduces no evidence that its obligation to unbundle loops deters competition.**

Verizon linesharing arguments, continued.

5. Eliminating linesharing simply puts the ILEC and the CLEC in "precisely the same position" because both carriers must provide voice and data over the same line in order to serve customers. Verizon Comments at 85.
   - **Covad is not in the same position as Verizon as to loops -- Verizon owns the loop plant by virtue of a government grant of monopoly and funded its network construction through a captive ratepayer base. Verizon still has 92% of the voice market, and can fund its DSL deployment because its voice customers pay for the full loop. Covad would have to win the voice customer from Verizon before Covad could offer DSL, thus forcing Covad to enter a market in which it has no expertise, and no prospect of winning sufficient customers.**

6. Linesharing is "inconsistent with the Act's goal of promoting facilities-based competition" because linesharing "unquestionably discourages CLECs from investing both in their own advanced services facilities and in facilities used to provide competitive telephony services." Verizon Comments at 86.
   - **Covad and other DSL providers would not, and could not, invest in their own loop plant to serve residential DSL customers, and thus the unbundling of the loop plant in no way deters facilities investment. With the exception of the UNE transmission facilities, Covad's network is already facilities based, and thus Covad has invested in the facilities it needs except ILEC transmission facilities that cannot be duplicated.**

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Verizon linesharing arguments, continued

7. Linesharing "degrades the ultimate performance and reach of the physical links." Verizon Comments at 86.
   - **Exactly the opposite is true - linesharing enhances the performance of existing loops by utilizing the upper frequencies. ADSL was designed to operate in a linesharing environment, and other than this conclusory statement, Verizon offers no specific technical evidence of degradation, as it cannot.**
8. Linesharing "indisputably reduces the ILECs' incentives to upgrade their networks." Verizon Comments at 86.
   - **Verizon introduces no evidence in support of its claim that the loop unbundling obligation deters Verizon from upgrading its loop plant. Verizon erroneously applies its argument about facilities that may be available on the open market (switches, e.g.) to loops.**

CLECs cannot provide residential/SOHO DSL without lineshared loops.

- Nothing on the record has changed since the adoption of linesharing in 1999, except the explosion in the availability of competitive DSL services at low prices, due to linesharing.
  - The record before the Commission in the Triennial Review does not justify reversal of linesharing rules -- no evidence that CLECs are no longer impaired without access to linesharing.
  - Even the Tauzin/Dingell bill expressly preserves linesharing.
- No BOC claims to be suffering economic harm or deterred from innovation because of unbundling of lineshared loops. If the BOC wins the customer, they get to use the transmission facility themselves.
- Sole BOC argument: cable is the "real monopoly" in broadband.
  - Mere existence of retail cable modem service does not change bottleneck nature of loops. Fact that cable companies are more skilled in selling retail service than BOCs is irrelevant to unbundling inquiry.
  - CLECs cannot access alternatives to loops, including cable plant.
  - Loops are not "new investment" or "new wires."

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How to address *USTA v. FCC*?

- *USTA* court is not predisposed against linesharing -- if it were, it wouldn't have bothered to remand the linesharing decisions to the FCC for reconsideration.
- In order to justify the preservation of linesharing, the Commission needs to address the specific issue raised by *USTA*: whether the existence of a cable modem retail broadband service means that CLECs are not "impaired" without access to lineshared loops.
- The Commission must be wary of Bell advocacy on this issue: it is the same nonsubstantive rhetoric as their Tauzin/Dingell advocacy. Cable modem companies are not the "real monopolies" in local loop plant.
- As the Broadband NPRM and SBC Dom/NonDom proceedings reveal, Covad could soon be the *only* DSL carrier providing service to non-BOC ISPs. Linesharing is more important than ever.

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How to address *USTA v. FCC*?

- Cable modem under the "impair" test of 251(d)(2).
  - Existence of cable modem in a market does not alleviate impairment, because:
    - **CLECs do not have access to cable transmission plant because the FCC's rules do not require it, and the cable companies do not voluntarily provide it. Therefore, lineshared loops remain the only possible transmission facility for CLEC consumer/SOHO DSL services.**
    - **Even if CLECs did have access to cable transmission services, the service CLECs "seek to provide" (DSL) cannot be provided over cable plant, because DSL simply does not work over cable frequencies;**
    - **Local loops, including the upper frequencies of loops, remain a monopoly bottleneck facility that must be unbundled, regardless of the existence of a similar-appearing retail service to DSL. Mere fact that cable companies have a 4 year head start in the broadband market, and thus have a lead on subscriber count (a lead that is rapidly diminishing) does nothing to impact statutory impairment analysis.**

How to address *USTA v. FCC*?

- Cable modem under the "at minimum" prong of 251(d)(2).
  - **Policy reasons for requiring lineshared loops are exactly the same as when the Commission first required it -- nothing on the record supports reversal of policy, and the record overwhelming support existing policy. Availability of broadband services has greatly expanded because of linesharing, and elimination of linesharing will have the direct and predictable consequence of reducing broadband deployment.**
  - **Congressional goals of encouraging (a) facilities-based local competition; (b) broadband deployment; (c) innovation and lower prices are all directly met only by preserving linesharing.**
  - **Existence of cable modem in a market does not lessen need for linesharing. Cable modem and phone company DSL together make an unhealthy duopoly. Competing ISPs need Covad DSL, now more than ever.**
  - **CLEC DSL is a technically superior, lower priced product than cable modem or BOC DSL.**
  - **ILECs are not "deterred" from investing because of linesharing, nor would CLECs ever be capable of building duplicative loop plant.**
  - **Eliminating linesharing will eliminate CLEC participation in the consumer broadband market, and will therefore reduce incentive for ILEC entry. Cable modem does not provide incentive for BOC deployment of DSL -- only CLEC DSL provides such incentive. Cable modem services were first launched in 1995. BOCs did nothing to respond. Covad DSL launched in 1997 -- BOCs responded soon after with their own DSL.**

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Loop Unbundling:

Remote Terminal-fed loops

Remote Terminal-fed loops

- The Commission has properly concluded that the loop is a bottleneck facility -- impossible to duplicate -- whether it is made of copper, a mix of copper and fiber, or all fiber.
- Fiber-fed loops are the product of the most efficient voice network plant deployment -- ILECs use RT-delivered loops even in the absence of DSL.
- ILEC “upgrades” of RTs use existing copper, fiber, remote terminals, rights of way, etc. The only new addition to the loop is a new RT line card/OCD port.
- Addition of loop electronics call for a new means of providing unbundled access to the loop -- the BOC-proposed “Broadband Service” is the right direction for the Commission, but as with all other loops, it must be a UNE.
- Because RT-delivered loops must be unbundled, the only issue to resolve is how to price the “new” component of the loop -- the RT line card/OCD port.

Verizon's July 16, 2002 Barr letter/SBC's Sept. 4, 2002 Daley letter provide RT loop unbundling roadmap

- The question is not whether access should be granted to fiber-fed loops (it should), but how to price the RT line card/OCD port.
- Verizon and SBC provide the details on how this can be handled within the existing TELRIC methodology:
  - **"First the Commission should further clarify the appropriate calculation of the cost of capital." Barr Letter at 2.**
  - **"The Commission should clarify that states should apply accurate and reasonable economic depreciation lives used for financial reporting purposes in TELRIC pricing models." Daley Letter at 3.**
  - **"Second, the Commission should further clarify the appropriate treatment of depreciation." Barr Letter at 2.**
  - **"While SBC's cost of capital is not currently before the Commission, the Commission should make clear that the heightened risk in today's environment must be taken into account in establishing a cost of capital for use in any TELRIC proceeding." Daley Letter at 4.**
- Covad agrees with the BOCs advocacy that an end-to-end connection is the best means of access to RT-delivered DSL-capable loops.
  - **As with all UNEs, the question of how to price those loops is the proper purview of the state commissions, with guidance from the FCC on how to apply TELRIC.**

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BOC arguments for scaling back of RT collocation and sub-loop unbundling must be considered together with the adoption of the Broadband UNE

- BOCs are asking the Commission to eliminate RT collocation and sub-loop UNEs in order to insulate their "new investment" against unbundling.
  - The Commission has concluded since 1996 that all loops, including loops delivered through RTs, are bottleneck facilities that cannot be duplicated by competitors. Nothing on the record in this proceeding challenges that finding.
- BOCs are willing to sell a "broadband service" to CLECs through RTs -- *see*, *e.g.*, Project Pronto and PARTS. Thus, the question is not whether RT-delivered loops should be unbundled -- it is the proper price for attached electronics.
- Tariffed offerings are no substitutes for UNEs. Congress did not intend that ILECs escape their loop unbundling obligations by offering tariffed access services, which are not subject to nondiscrimination obligations and can be withdrawn.

How to address *USTA v. FCC*?

- Loops are bottleneck facilities, and only through ubiquitous unbundling of loops can any facilities-based local competition take hold.
- The Commission's decision to base unbundling of loops on the material the loops are made of would "technically redline" consumers by denying access to competitive services to any consumer with the misfortune to have a loop with fiber in it.
- BOC use of fiber in the loop, or upgrade to line card in an RT, is simply minor modification to a bottleneck facility, and does not mean that CLECs can now build their own loops.
- Any electronic attachments to the loop are part of the "features, functions, and capabilities" of that loop, and therefore must be unbundled together with the loop. If the pricing is done properly by the states, guided by the FCC, the ILECs will be fully compensated for their loop plant investment.

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Interoffice Transport

Overview -- Interoffice Transport

- True interoffice transport is part of the bottleneck transmission grid, just like loops.
- The Commission's findings as to interoffice transport in the *UNE Remand Order* are still valid.
- ILECs own "Fact Report" shows that 86% of ILEC COs have no competitive fiber provider collocated.
- ILECs provide not a *single example* of a true interoffice transport route that is actually served by CLEC transport.
  - The only data provided by ILECs is whether there is a collocated fiber CLEC -- no indication as to where the fiber goes. Most likely, to downtown office buildings, not to other central offices. This is the fundamental flaw in the BellSouth/TWTC proposal.
- ILECs are confusing the issue between fiber loops and interoffice transport in order to sell more special access services.
- Determination of competitive interoffice transport is fact-specific and route-specific inquiry.
  - Where does the fiber go? Is it available to third parties?

Covad's network is dependent on interoffice transport

- Covad's ATM backbone network is the second largest ATM network in the country (only AT&T's is larger).
  - Covad runs two interoffice transport networks: Telemetry (network management) and production (customer data).
  - Requires access to DS-1 *and* DS-3 interoffice transport from *every* central office in which Covad is collocated (>1800 nationwide).
- Covad's network of collocated COs requires interoffice transport between all COs in the market -- one or two gaps, and Covad's network shuts down. Such transport is not available from CLECs.
- If CLEC interoffice transport were available, Covad would use it, rather than rely on the ILEC. As the record demonstrates conclusively, it is not available.
- Facilities based competition (CLECs purchasing ATM switches, IP routers) is the Commission's goal, and Covad is doing exactly that. Interoffice transmission grid cannot be (and should not be, from an economic efficiency standpoint) duplicated by CLECs. Congress intended unbundling of the transmission grid.

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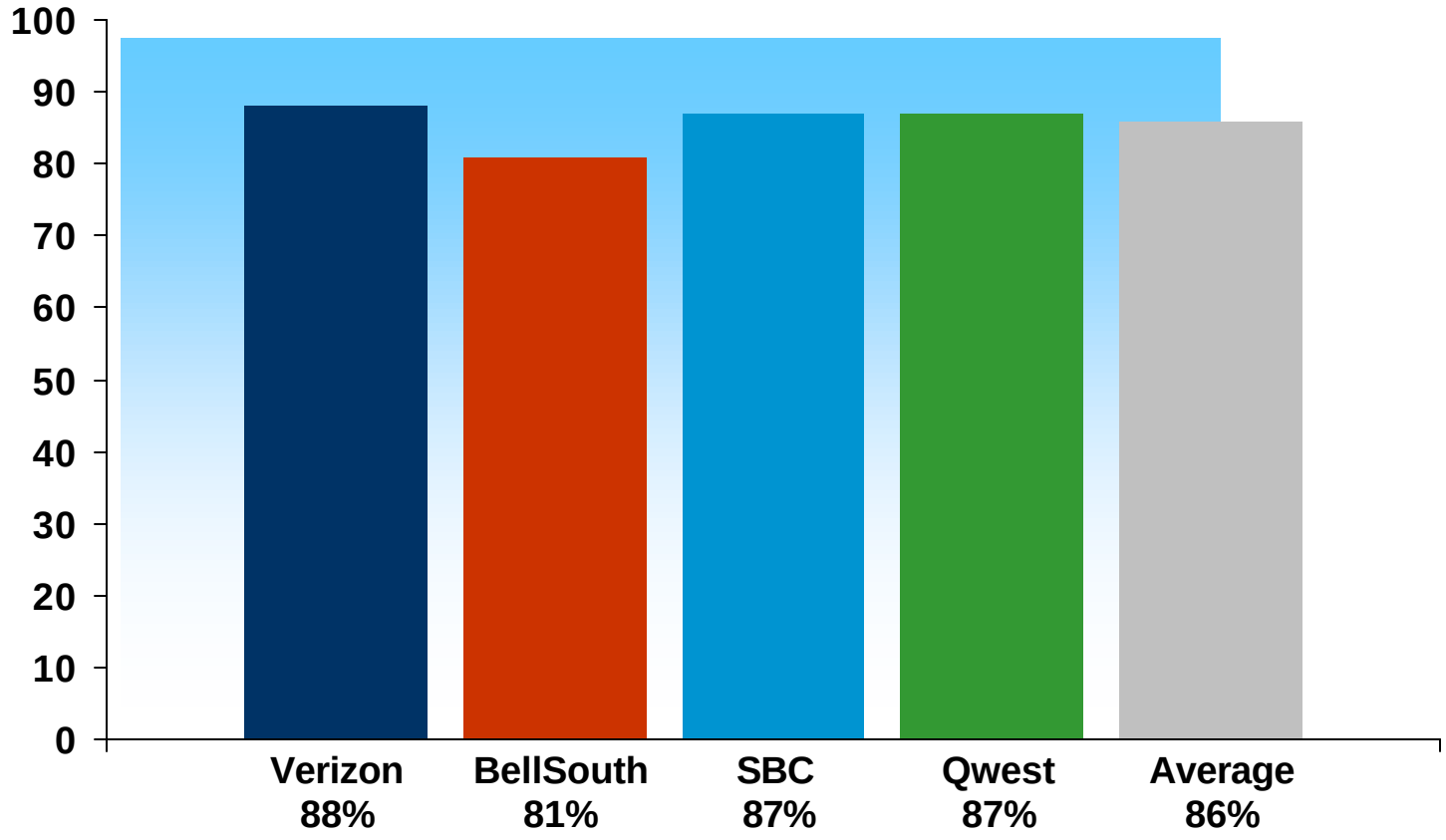
Percentage of ILEC COs without a single competitive fiber provider collocated

Source: UNE "Fact" Report at III-2.



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How to address *USTA v. FCC*?

- No evidence on the record to support elimination of interoffice transport at this time as to any specific routes.
- DOJ HHI analysis provides a benchmark for future route-specific analysis of transport routes, which is what the *USTA* court suggested.
  - **Even the BOCs support use of HHI. *See* BellSouth Taylor decl. at 66; Qwest, Att. B, Strategic Policy Research at 5 n. 11.**
- Marketplace certainty is paramount -- existing interoffice transport network must remain in place for at least 24 months. Commission must provide certainty that ILECs will not flood regulators with petitions to eliminate routes until those routes are actually fully competitive. Burden of proof on ILEC.
- FCC must require at minimum a 24 month transition period for CLECs to obtain transmission capabilities if ILEC UNE transport is no longer available. At end of 24 months, ILEC must still provide transport, but at commercial rates no greater than special access.
- "Available" interoffice transport must take account of viability of transport provider, blanket coverage in a geographic area (CLECs cannot use multiple transport providers in different COs in the same geographic market), availability of access to transport/loop links.